IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 168 of 2007

VIRENDRA MAL BHANDARI
V/S
A.D.J.(F.T.)N0.2,BHILWARA & ANR.

Mr. SAJJAN SINGH, for the appellant / petitioner

Date of Order : 11.1.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner.

The impugned order has been passed by the learned trial Court deciding issue No.6, and holding that Board of Industrial and Financial Reconstruction has held the defendant-company to be not possible to revive, and has ordered liquidation, on which S.B.Company Petition No.8/2000 has been registered in the High Court, and after perusing certified copy of the order-sheets, it was concluded that official liquidator has been appointed, who is proceeding with the matter. Then learned trial Court relying upon Section 446(3) of the Companies Act has held that such litigation is required to be transferred to the Company Court, and has accordingly, ordered for transfer.

It is contended by the learned counsel for the petitioner that Section 446(3) has been deleted way-back by Amendment Act No.11 of 2003, and therefore, this order

could not be passed.

I have considered the submission.

Of course, sub-section (3) of Section 446 has been deleted, but then even by virtue of sub-section (1), the suit cannot proceed except with the leave of the competent Court. In that view of the matter, may be that the suit need not be transferred, but then the suit cannot proceed either, unless requisite permission is obtained.

Learned counsel for the petitioner, in these circumstances, submitted that since the file has already been ordered to be transferred, he may be given liberty to move appropriate application before the Company Judge, and seek appropriate permission, as required by Section 446(1). I do not find anything objectionable in this course.

The writ petition is, accordingly, disposed of granting the petitioner aforesaid liberty.

(N P GUPTA),J.

/Sushil/